

**Sullivan Brothers Printers, Inc. and Local 600M,
Graphic Communications International Union,
AFL-CIO. Case 1-CA-30834**

May 24, 1995

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS STEPHENS
AND COHEN

On July 15, 1994, Administrative Law Judge Harold Bernard Jr. issued the attached decision. The General Counsel filed exceptions, a supporting brief, and an answering brief. The Respondent filed exceptions, a supporting brief, and an answering brief. Local 600M (the Union) and the Graphic Communications International Union, AFL-CIO (GCIU), the Intervenor, jointly filed exceptions and a request for oral argument, a supporting brief, and an answering brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings, and conclusions and to adopt the recommended Order only to the extent consistent with this Decision and Order.

The judge concluded that the Respondent violated Section 8(a)(5) and (1) of the Act by refusing to recognize and bargain with the Union and by unilaterally changing terms and conditions of employment of the Respondent's employees represented by the Union in the pressmen's unit after the Union merged with Local 109C, which formerly represented the Respondent's employees in that unit. We adopt the judge's conclusion for the reasons stated in his decision and the additional reasons articulated below.

The judge further concluded that the Respondent did not act unlawfully by refusing to recognize and bargain with the Union and unilaterally changing terms and conditions of employment of the Respondent's employees represented by the Union in the bookbinders' unit after the Union merged with Local 139B, which formerly represented the Respondent's employees in that unit. The judge based his conclusion on his finding that the merger vote which resulted in the Union's taking over as the representative of the employees in the bookbinders' unit was not accomplished with the requisite due process. The General Counsel, the Union, and the Intervenor have excepted to the judge's dismissal of the complaint with respect to the bookbinders' unit. We find merit in these exceptions.

Local 139B represented employees employed in the bookbinders' unit at the Respondent's Lowell, Massachusetts printing plant for at least 33 years. The last collective-bargaining agreement covering that unit was negotiated between Local 139B and the Respondent

and had an expiration date of August 31, 1993.¹ Local 139B also represented a separate unit of bookbinders at North American Directory Company (NADCO), a larger employer in the same geographic area as the Respondent, whose employees dominated the local in terms of membership numbers and leadership.

At the time of the events at issue, Local 139B was affiliated with the Intervenor here, as is the Union. The Union represents employees in a combined mix of printing industry classifications, including bookbinders, within a larger geographic area including Massachusetts. Local 139B and the Union maintained separate constitutions and bylaws but were covered under the same International union's constitution and bylaws. That International constitution encourages merger in all situations where more than one local exists in the same geographic area. It also discourages maintaining locals in situations where the local membership falls below 50 active members.

In 1990, NADCO announced its impending closure, and thereafter closed its bindery operations in 1991. NADCO, however, retained 10 bindery employees in 1991, including Local 139B president, Oscar Becht, to assist the pressmen until February 1993, when the plant would close completely. Thus, Becht continued in office after the 1991 layoff and, along with another remaining officer, Jeanette Pickels, who served as Local 139B's secretary and secretary-treasurer, provided the local with continuing leadership in the absence of a designated official shop steward for the Respondent's bindery unit. In the early part of 1993, Becht unsuccessfully broached with the approximately 10 remaining Local 139B members employed by the Respondent the possibility of their assuming leadership of the Local in the future. He also discussed the option of merging with another local, including merger with the Union. He kept the Respondent's bindery employees informed about the status of his talks with the Union's president, George Carlsen, regarding a possible merger, which he informed them would be in the best interest of the Local. He received no negative feedback.

Becht held no formal meetings with the remaining Local 139B members during this period because there was no place to hold such meetings after the NADCO bindery closure. After four or five informal meetings at the Respondent's plant with the Respondent's employees informing them of the status of negotiations, Becht decided to conduct a vote on March 29 on the proposed merger. One week before, he informed the Respondent's bindery employees that on that date he would bring around ballots for a vote on the merger. As was his customary practice, Becht personally informed the five or six day-shift employees and used employee Manny Mendez, a former NADCO em-

¹ All dates are in 1993 unless otherwise indicated.

ployee, as his contact person with respect to the rest. He instructed Mendez that everyone was to receive one ballot, the employees were to vote, and the ballots were to be put in an envelope, sealed, and returned to Becht. The next day he would return to pick up the envelope.

On March 29, Becht personally handed out ballots to the five or six day-shift employees proposing merger with the Union. He did not collect them. He left ballots with Mendez to give to the night-shift employees. He instructed Mendez to collect the ballots, to seal the envelope, and to deliver it to Becht the following day. When Becht returned the next day, he got the sealed envelope, opened it, and counted the ballots in the presence of at least some of the unit employees. There were eight ballots in the envelope, all cast in favor of the merger. There was no objection raised to the merger vote process at the time of the count or at any time subsequently. On June 14, the Intervenor notified Becht and Carlsen it had approved the merger, termed an "administrative transfer," retroactive to May 1.

On June 22, Carlsen, former Local 109C President Henry Boormeester, and Becht met with Tom Bellamo, the Respondent's chief financial officer. Carlsen informed Bellamo that the Union would be representing the Respondent's bindery and press employees. This conversation was followed by a notice of contract termination from Becht to Carlsen concerning the bookbinders' expiring agreement, in which Becht confirmed in writing that Carlsen would be representing the bookbinders in negotiations for a successor agreement. On July 6, Carlsen formally notified the Respondent of the administrative transfer of Local 139B into the Union. Carlsen's letter stated that all future dealings would be accomplished through the Union. Subsequently, after several unsuccessful attempts to schedule meetings with Bellamo, Carlsen was told to contact the Respondent's attorney, who informed Carlsen the Respondent would not recognize and bargain with the Union as the representative of its employees in either unit. Since that time, the Respondent, contending it has no obligation to recognize and bargain with the Union, has made changes unilaterally in the wages, hours, and other working conditions of employees in the bookbinders' and pressmen's units.

Once certified by the Board or voluntarily recognized by an employer as the majority representative of unit employees, a union enjoys a presumption of continued majority support and the employer has a corresponding continuing obligation to recognize and bargain with the union. *Minn-Dak Farmers Cooperative*, 311 NLRB 942, 944 (1993), enfd. 32 F.3d 390 (8th Cir. 1994), citing *Burger Pits, Inc.*, 273 NLRB 1001 (1984), and cases cited therein. A change in internal

structure or affiliation does not necessarily change this obligation.

Consistent with the Supreme Court's admonition in *NLRB v. Food & Commercial Workers Local 1182 (Seattle-First National Bank)*, 475 U.S. 192 (1986), that the paramount policy of the Act, i.e., encouraging stable bargaining relationships to preserve industrial peace, should not be unnecessarily disrupted, the Board will interject itself only in the most limited of circumstances involving such internal changes. Thus, only where an affiliation vote is conducted with less than adequate due process safeguards² or where the organizational changes are so dramatic that the post-affiliation union lacks substantial continuity with the preaffiliation union will the Board find the employer's duty to bargain does not continue. *Minn-Dak*, 311 NLRB at 945; *City Wide Insulation*, 307 NLRB 1, 3 (1992);³ *May Department Stores Co.*, 289 NLRB 661 (1988), enfd. 897 F.2d 221 (7th Cir. 1990), cert. denied 111 S.Ct. 245 (1990); and *Quality Inn Waikiki*, 297 NLRB 497 (1989). Further, the Board has consistently held that a party seeking to avoid its bargaining obligation by virtue of a change has the burden of demonstrating that the change was not accomplished with minimal due process, e.g., *News/Sun-Sentinel Co.*, 290 NLRB 1171, 1176 (1988), enfd. 890 F.2d 430 (D.C. Cir. 1989); and *Quality Inn Waikiki*, 297 NLRB at 501 fn. 13; or was sufficient to raise a question concerning representation, e.g., *Minn-Dak*, 311 NLRB at 945, citing *H. B. Design & Mfg.*, 299 NLRB 73 (1990).

The practical and policy reasons underlying the Board's approach are abundantly clear. At issue in this type of case are essentially internal union matters with respect to which, as noted above, a strong disapproval of unnecessary Board intervention has frequently been expressed by the courts and the Board itself. E.g., *Seattle-First*, 475 U.S. at 204 fn. 11, and accompanying text, *Insulfab Plastics*, 274 NLRB 817, 821 (1985), enfd. 789 F.2d 961 (1st Cir. 1986); and *Ocean Systems, Inc.*, 223 NLRB 857, 859 (1976), enfd. 571 F.2d 850 (5th Cir. 1978), cert. denied 439 U.S. 893 (1978). Further, most affiliations or mergers would change a union's organizational structure to some extent, but clearly such natural and foreseeable consequences would not automatically raise a question concerning representation. *Action Automotive*, 284 NLRB 251, 254 (1987). As the Court in *Seattle-First*, supra, recog-

²In light of our findings here that the Board's traditional due process requirements have been met in this case, we find it unnecessary to determine whether, in view of the Supreme Court's opinion in *Seattle-First*, supra, the Board lacks authority to impose due process requirements. Thus, we deny the joint request of the Union and the Intervenor for oral argument on this issue.

³*City Wide Insulation*, supra, cited by the judge, formulates the continuity test as whether the postaffiliation union's preexisting authority has substantially changed for the worse.

nized, change is the natural consequence of ordinary, valid reasons for affiliations and mergers, such as increased financial support and bargaining power. *Seattle-First*, 475 U.S. at 199 fn. 5. In sum, as we have stated, “[t]he notion that an organization somehow loses its identity and becomes transformed . . . because it acquires more clout and becomes better able to do its job is an absurdity and one which flies squarely in the face of a clearly stated congressional objective” *Insulfab*, 279 NLRB at 823.

Thus, in many cases a majority of employees will continue to support a union despite any affiliation or similar changes. *Seattle-First*, 475 U.S. at 203 fn. 10, and accompanying text. Additionally, as the judge noted, situations involving mergers of sister locals have less inherent potential for significant change than other types of changes. *Toyota of Berkeley*, 306 NLRB 893, 903 (1992), partially vacated on other grounds *Nancy Watson-Tansey*, 313 NLRB 628 (1994). See also *F. W. Woolworth Co.*, 305 NLRB 775, 779 (1991), citing *American Mailers (Plant #2)*, 231 NLRB 1194 (1977), *enfd.* 622 F.2d 242 (6th Cir. 1980).

In light of the above, the Board’s analysis, rather than being mechanistic and using a strict checklist, is directed at analyzing the totality of circumstances in order to give paramount effect to employees’ desires. See *Minn-Dak*, 311 NLRB at 945; *Central Washington Hospital*, 303 NLRB 404, 404 and fn. 6 (1991); *Quality Inn Waikiki*, 297 NLRB at 502; *Aurelia Osborn Fox Memorial Hospital*, 247 NLRB 356, 359 (1980); and *American Mailers*, 231 NLRB at 1195.

Applying these principles to the facts of this case, we find that the merger of Local 139B and the Union was accomplished with at least minimally adequate due process and did not sufficiently change the former union so as to raise a question concerning representation. Thus, we conclude that the Respondent violated Section 8(a)(5) when it refused to recognize and bargain with the Union and unilaterally changed terms and conditions of employment of the Respondent’s employees in the bookbinders’ unit.

As stated above, the burden of establishing lack of adequate due process in the merger vote rests with the Respondent and, in the absence of substantial irregularity, the Board will not normally concern itself with the union’s internal voting procedures. *Ocean Systems*, 223 NLRB at 859. Here, as detailed above, Becht accorded Local 139B members adequate notice and a sufficient opportunity to discuss the merger prior to the vote. The fact that no formal meetings were held is not significant, especially in light of the fact that Becht’s interaction with the remaining Local 139B members was consistent with his established practice.

With respect to the vote itself, there is no evidence that it was not accomplished with adequate procedural safeguards. Becht knew that all the employees were

current union members.⁴ He personally distributed the ballots to day-shift employees and entrusted Mendez to distribute ballots to the night-shift employees and to collect the ballots and place them in a sealed envelope. Becht’s use of Mendez as a conduit was again consistent with his established practice. The ballots were in a sealed envelope, exactly as Becht had requested, when he retrieved them the following day. There was no evidence at all that the ballots had been tampered with or that their secrecy had in any manner been compromised.⁵ Most important, there is no indication that any individual objected to the voting procedures or any aspect of merger either at the time of the vote or any time subsequently, or that the vote did not reflect the majority view.⁶ In these circumstances, particularly noting that this case involves the merger of sister locals and that no one objected, we find the Board’s standard of minimal due process to be satisfied. *F. W. Woolworth*, 305 NLRB at 779, citing *American Mailers*, 231 NLRB at 1195.

We further find, for reasons substantially similar to the judge’s determination with respect to the bookbinders’ unit, that under all the circumstances the changes between Local 139B and the Union after the merger were not so dramatic as to raise a question concerning representation. With respect to leadership, as the judge noted, citing *Service America Corp.*, 307 NLRB 57 (1992), the Board has found that this is merely one element to be considered. The situation here is somewhat unusual. Pickels and Becht, the only remaining Local 139B officers at the time immediately

⁴ Contrary to the judge who, without explanation, questioned the basis for Becht’s knowledge concerning the union membership status of the Respondent’s unit employees as being “without foundation,” we accept the veteran Local 139B officer’s uncontroverted testimony that all the employees in the 10-member unit were union members at the time of the vote. In doing so, we rely on his testimony that he was a Local 139B member for 33 years, during which time he held a variety of officer positions, including the period from 1986 through the time of the merger, as well as the fact that this is a small unit.

⁵ Nor is there any indication that the members were not afforded the opportunity of a secret-ballot vote. In this regard, the Board has repeatedly held that the rules governing Board elections are not applicable to merger votes and that the precise procedures used are not critical. Thus, the failure to provide a voting booth or some other mechanism to assure secrecy of ballots has not been found to invalidate a merger vote in the absence of any evidence that individuals observed others voting or that ballots had been tampered with. *Hammond Publishers*, 286 NLRB 49, 51 (1987). Further, although the Board has indicated in a number of cases that secret balloting is required for minimal due process, the Board has nonetheless found mail balloting or the absence of secret balloting not to invalidate a merger election. See *News/Sun-Sentinel*, 290 NLRB at 1176; *May Department Stores*, 289 NLRB at 664-665; and *Aurelia Osborn Fox Memorial Hospital*, 247 NLRB at 359.

⁶ Similar to the facts here, in *Insulfab*, 279 NLRB at 823, in finding that its due process requirements had been satisfied, the Board specifically noted that no one present was ineligible to vote and that the unit was small so that all the facts were known to the employees and no one objected.

preceding the merger, were offered positions with the Union. These individuals were no longer employed by NADCO at the time of the merger and declined to become officers in the merged Local. Thus, the discontinuity in leadership was caused by the free choice of the former leaders themselves, and not by any policy of the Union. In any event, Becht agreed to serve on the Union's negotiating committee. There essentially was no other existing leadership at the time of the merger.⁷ In fact, as in *Service America*, 307 NLRB at 60, the record indicates that Local 139B's potential problem servicing members in the future after the NADCO closing because of lack of adequate leadership was one of the primary reasons behind the unions' merger.

Thus, Becht, who previously served on Local 139B's negotiating committee, will continue to perform the same leadership role with respect to the Union's negotiations with the Respondent. Otherwise, as in the past, negotiations will be accomplished by the president of the union, who, as in the past, will not be one of the Respondent's employees.⁸ In all other respects, the leadership, or lack thereof, remains the same and is a natural consequence of the NADCO closing, and not of the merger itself.

Membership was extended automatically by the Union to former Local 139B members, with no assessment of any initiation fees. Additionally, the Union has demonstrated its willingness to assume the former Local 139B collective-bargaining agreement. As members of the Union, the former members of Local 139B are covered by the same International constitution and bylaws. As previously, they are also covered by a separate constitution and bylaws subordinate to the International governing documents. The constitution and bylaws of both Locals are substantially the same concerning membership requirements, strike votes, contract ratification procedures, and grievance handling.

As with Local 109C, which represents the pressmen's unit, the Local 139B requirement for eligibility to hold elected union officer positions is 4 years' membership, as opposed to 5 years under the Union's procedures. Contrary to the Respondent's argument, however, this difference is of no practical effect because all former Local 139B employees meet the higher eligibility requirement imposed. Further, as discussed by the judge with reference to the pressmen's

local, another slight difference involves dues structure. Local 139B imposed a flat dues rate while the Union imposes dues based on a sliding scale, which would result in an overall increase for former Local 139B members. As noted above, however, former Local 139B members are not being charged initiation fees and there was no showing that the differences in dues rates were substantial. See *Central Washington Hospital*, 303 NLRB at 404 fn. 8.

As the Respondent asserts, there is also a difference between Local 139B's bylaws (and those of Local 109C) and those of the Union with respect to members' rights to accept outside employment, with the latter containing a restriction. There is no indication, however, that the Union has ever invoked its provision restricting a members' ability to accept outside employment. It is actual practice rather than policy which controls. See *Central Washington Hospital*, 303 NLRB at 405. Thus, in the absence of evidence that the Union has ever enforced its bylaw policy, we find no significant change.

Similarly, the Respondent contends that the Locals' ability to call a strike is dramatically changed after the mergers of Locals 139B and 109C with the Union because the Union's executive board would have the right to call a strike in either unit of the Respondent's employees without conducting a strike vote, contrary to the Locals' former procedures. The Union's bylaws do provide that in "special cases" involving units of fewer than 25 members where the board is satisfied that the strike is supported by the membership and the International and would have no adverse impact on the Local, the executive board may authorize a strike without a vote. Once again, however, it is practice rather than policy which is critical under Board precedent. In this regard, Carlsen testified that it is the Union's practice to have the individual shop that will be the subject of a possible strike conduct a strike vote by secret ballot with a two-thirds majority vote necessary to authorize a strike. Thus, in terms of actual practice, there is, at most, a minimal difference between the two locals' premerger procedures and those of the Union.⁹

Further, the Respondent points out that, contrary to former Local 139B's procedures, the Union's procedures allow its executive board to accept a contract offer contrary to its membership's vote. Although there is evidence that the Union's procedures do allow its executive board to accept contracts contrary to the vote of its membership, it is clear that this procedure takes effect only in a very limited situation, i.e., where a unit rejects a contract offer, votes not to strike, and does not accept the executive committee's recommendation.

⁷In this regard, bindery employees employed by the Respondent had no chapel chair, i.e., steward, before the merger when represented by Local 139B or after the merger when represented by the Union.

⁸Carlsen testified that it was his intention to have the following individuals on the Union's negotiating committee for the Respondent's bindery employees: himself, Becht, Steve Wysocki (the steward from the printing unit who in the past has acted as chapel chair in the absence of a steward for the bindery unit), and a bindery unit employee if possible.

⁹According to the record, Local 109C required a three-quarter vote of the shop by secret ballot before a strike could be called, and, according to Becht's testimony, he believed that Local 139B required a two-thirds majority vote before a strike could be called.

Under these limited circumstances, such a difference does not rise to the level of a significant change. *Seattle-First National Bank*, 290 NLRB 571, 573 (1988).

The Respondent also asserts that the manner in which the unit's collective-bargaining agreement will be negotiated and administered will be different under the Union than it was under Local 139B. In support, it refers to testimony that Union President Carlsen intends to engage in joint contract negotiations for the Respondent's bookbinders and pressmen, rather than separate negotiations, as Local 139B and Local 109C did previously. The Respondent also refers to the Union's bylaw provision indicating that members of the shop must submit contract proposals in writing, as contrasted with former Local 139B's practice of seeking suggestions from the unit on contract proposals orally rather than in writing. As to suggestions for contract proposals, although Carlsen conceded that the Union's bylaws state that suggested contract proposals must be submitted in writing to the president 90 days prior to contract expiration, he also testified that in practice its procedures for seeking proposals from employees are flexible.¹⁰ He further testified that he merely suggested joint negotiations as a possibility and would be willing to conduct either separate or joint negotiations as the employees wished. There is no evidence that the Union would insist on joint negotiations if the Respondent sought separate negotiations for the separate units. Thus, Carlsen indicated that he is amenable to negotiating in the same manner as the former local did previously. Under these circumstances, we cannot agree that procedures for contract negotiations differ dramatically.¹¹

In sum, as the judge found with respect to the pressmen's unit, the merger of Local 139B and the Union resulted in little practical change, with the Respondent's bindery employees remaining an intact and autonomous group within the same International and governed by the same International constitution and bylaws. In this context, consistent with the finding of the judge with respect to the pressmen's unit, we agree that the change in size between the premerger Local 139B and the Union is not sufficient to raise a question concerning representation in the absence of other

factors. It is clearly true that the numerical strength of Local 139B was diminished considerably by the NADCO closing. Thus, at the time of the merger, there was a substantial disparity between the sizes of Local 139B and the Union. As the judge found with respect to the pressmen's local, however, the size of Local 139B fluctuated considerably during the course of its long history. Further, the unit of bindery employees employed at the Respondent was historically just a small portion of the local's membership. In sum, the Respondent's bindery employees remain a small segment of a larger local representing similar craft employees within the same geographic area under the same International.¹² In any event, the Board has not found increased size alone to be significant, especially where, as here, the merger of two sister locals is involved. See, e.g., *Service America*, 307 NLRB at 60-61;¹³ *Toyota of Berkeley*, 307 NLRB at 904; and *Kentucky Power*, 213 NLRB 730, 731 (1974).

Similarly, in this context, we find that the transfer and commingling of assets is not dispositive. Although Local 139B's monetary assets were transferred to the Union and commingled with other funds, there is no showing that the Respondent's bindery unit employees have less money available to them. To the contrary, Carlsen's testimony establishes that the full resources of the Union are available to the former Local 139B unit in connection with its efforts to represent its members. *Toyota of Berkeley*, 306 NLRB at 904. As discussed above, the Court in *Seattle-First*, 475 U.S. at 198 fn. 5, specifically recognized that increased size, financial support, and bargaining power are ordinary and valid reasons for mergers and affiliations. *Toyota of Berkeley*, 306 NLRB at 904. Thus, as found previously, it would frustrate a purpose of the Act to find that employee expressions of desires to achieve these goals through affiliations and mergers automatically raised questions concerning representation.

Accordingly, we find that by refusing to recognize and bargain with the Union as the exclusive representative of the Respondent's bindery employees and unilaterally changing unit employees' terms and condi-

¹⁰ As indicated above, practice rather than policy is controlling in assessing the extent of changes.

¹¹ There is little evidence in the record about contract administration practices. Becht testified that under Local 139B, grievances would be resolved informally by a shop employee in the first instance. If attempts to informally resolve the grievances at the shop level were unsuccessful, Becht, as president of the Local, would have the authority to resolve grievances. Carlsen testified briefly about how the Union handles grievances. After initial attempts to resolve the grievances at the shop level by the affected individual and then the shop delegate, he has the authority to resolve grievances. Thus, the evidence does not show any significant differences in grievance handling procedures.

¹² Local 139B represented bookbinders' units in the Lowell, Massachusetts area. The Union represents a combined mix of printing industry classifications, including bookbinders, in a larger geographic area encompassing the Lowell, Massachusetts area. Carlsen estimated that about 500 members of the Union's 700 members are employed as pressmen or bookbinders.

¹³ In *Service America*, supra, the Board distinguished cases in which the affiliated or merged union underwent enormous changes in size, organization, structure, and administration from the situation where in all significant respects the employer was bargaining with an entity similar to the one with it had previously recognized and bargained with, characterizing the changes that occurred as more in the nature of administrative changes.

tions of employment, the Respondent violated Section 8(a)(5) of the Act.¹⁴

ORDER¹⁵

The National Labor Relations Board orders that the Respondent, Sullivan Brothers Printers, Inc., Lowell, Massachusetts, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to recognize and bargain with Local 600M, Graphic Communications International Union, AFL-CIO as the exclusive representative of the employees in the pressmen's and bookbinders' units described below.

(b) Repudiating the collective-bargaining agreements applicable to the employees in the pressmen's and bookbinders' units.

(c) Failing to make contributions to the pension funds owed under the collective-bargaining agreements covering the pressmen's and bookbinders' units.

(d) Unilaterally changing wages, hours, and working conditions of employees in the units described below without prior notice to the Union and without first affording the Union an opportunity to meet and bargain concerning these matters.

(e) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

¹⁴ We recognize that the Court of Appeals for the First Circuit affirmed the district court's denial of 10(j) relief in this case. *Pye v. Sullivan Bros. Printers*, 147 LRRM 2584 (1st Cir. Oct. 26, 1994). In doing so, the court held that the district court did not abuse its "discretion in concluding that the Board had not demonstrated a clear likelihood of success," and thus "injunctive relief would not have been just and proper." Of course, that decision is not a final adjudication of the merits. *Coronet Foods, Inc. v. NLRB*, 981 F.2d 1284, 1288 (D.C. Cir. 1993) (expressing doubt that "district court finding in a 10(j) auxiliary proceeding would later bind the NLRB when ruling, definitively on the unfair labor practice charge"). See also *Roofers Local 30 v. NLRB*, 1 F.3d 1419, 1425 fn. 9 (3d Cir. 1993) (appellate court's affirmance of district courts' finding in a 10(l) injunction proceeding that certain picketing was lawful is not binding on either the Board or the reviewing appellate court in the subsequent proceeding on the merits). For the reasons set forth herein, we find that a preponderance of the evidence establishes a violation.

¹⁵ In accordance with the General Counsel's request, we modify the judge's Order to require the Respondent to honor the existing checkoff provisions of the current pressmen's collective-bargaining agreement. We shall not modify the judge's Order to require the same with respect to the bookbinder's contract in light of the fact that the bookbinder's agreement has expired. It is well settled that the checkoff obligation does not survive contract expiration. See, e.g., *Litton Business Systems v. NLRB*, 501 U.S. 190 (1991), and *Indiana & Michigan Electric Co.*, 284 NLRB 53, 55 (1987). We further modify the Order to require the Respondent to remit all fees and dues owed under the collective-bargaining agreements, as opposed to only those collected, in accordance with the General Counsel's request.

(a) On request, recognize and bargain with Local 600M concerning the wages, hours, and other terms and conditions of employment for the employees in the following appropriate units and, if agreements are reached, embody the terms of the agreements in signed written documents:

Pressmen's Unit:

All color cameramen and darkroom, black and white cameramen and darkroom, dot etchers, platemakers-black and white, photocomposer operators, platemakers-color, strippers, copy preparation, pasteup, layout and imposition, opaques and artist, preparation, and plate processors, but excluding all other employees, office clerical employees, guards and supervisors as defined in the Act.

Bookbinders' Unit:

All journeyman I, journeyman I apprentices, and journeyman II employees and helpers, but excluding all other employees, office clerical employees, guards and supervisors as defined in the Act.

(b) Honor the terms and conditions in the current collective-bargaining agreement covering the pressmen's unit above effective June 1, 1992, through May 31, 1995, and the terms of the collective-bargaining agreement covering the bookbinders' unit effective from September 1, 1990, through August 31, 1993, that survive contract expiration.

(c) Adhere to the union-shop provisions of the collective-bargaining agreements described here.

(d) Transmit to Local 600M any and all fees and dues owed under the collective bargaining agreements described here, with interest as set forth in the remedy section of the judge's decision.

(e) Resume pension contributions as required under the terms of the collective-bargaining agreements described here, including paying past due and unpaid contributions.¹⁶

(f) Resume honoring the checkoff provisions of the pressmen's current collective-bargaining agreement described above.

(g) Make whole employees in the pressmen's and bookbinders' units described above for any losses they may have suffered because of any unilateral changes in wages, hours, and other working conditions¹⁷ or be-

¹⁶ To the extent that an employee has made contributions to a pension fund that have been accepted by the fund in lieu of the Respondent's delinquent contributions during the period of delinquency, the Respondent shall reimburse the employee, but the amount of such reimbursement will constitute a setoff to the amount that the Respondent otherwise owes the fund. Any additional amounts owed with respect to these fund contributions shall be calculated in the manner set forth in *Merryweather Optical Co.*, 240 NLRB 1213 (1979).

¹⁷ *Kraft Plumbing & Heating*, 252 NLRB 891 (1980).

cause of the Respondent's failure to abide by the collective-bargaining agreements applicable to those unit employees, to be computed as set forth in *Ogle Protection Service*, 183 NLRB 682 (1970), plus interest computed in the manner set forth in the remedy section of the judge's decision.

(h) On request by Local 600M, rescind all unilateral changes; however, adhere to any changes in wages, benefits, or other terms and conditions of employment for unit employees which were unilaterally instituted but are superior to those set forth in the agreements, except on request by the Union.

(i) Post at its Lowell, Massachusetts plant copies of the attached notice marked "Appendix."¹⁸ Copies of the notice, on forms provided by the Regional Director for Region 1, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(j) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

¹⁸ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to recognize and bargain with Local 600M, Graphic Communications International Union, AFL-CIO as the exclusive representative of our pressmen and bindery employees in the following appropriate units:

PRESSMEN:

All color Cameramen and darkroom, black and white cameramen and darkroom, dot etchers, platemakers-black and white, photocomposer operators, platemakers-color, strippers, copy preparation, pasteup, layout and imposition, opaquers and artist, pre-preparation, and plate processors, but excluding all other employees, office clerical em-

ployees, guards and supervisors as defined in the Act.

BOOKBINDERS:

All journeyman I, journeyman I apprentices, and journeyman II employees and helpers but excluding all other employees, office clerical employees, guards and supervisors as defined in the Act.

WE WILL NOT repudiate the collective-bargaining agreements applicable to the employees in the units described above.

WE WILL NOT fail to make contributions to the pension funds owed under the collective-bargaining agreements covering the units described above.

WE WILL NOT unilaterally change wages, hours, and working conditions of employees in the units described above without prior notice to the Union and without first affording Local 600M an opportunity to meet and bargain concerning these matters.

WE WILL NOT in any other manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, recognize and bargain with the Union concerning the wages, hours, and other terms and conditions of employment for our employees in the bargaining units described above, and and put in writing and sign any agreements reached.

WE WILL honor the terms and conditions of the current collective-bargaining agreement covering the pressmen's unit effective June 1, 1992, through May 31, 1995, and the terms of the collective-bargaining agreement covering the bookbinders' unit effective from September 1, 1990, through August 31, 1993, that survive contract expiration.

WE WILL adhere to the union-shop provisions of the collective-bargaining agreements described here.

WE WILL transmit to Local 600M any and all fees and dues owed under the collective-bargaining agreements described here, with interest.

WE WILL resume pension contributions as required under the terms of the collective-bargaining agreements described here, including paying past due and unpaid contributions, with interest.

WE WILL resume honoring the checkoff provisions of the pressmen's current collective-bargaining described above.

WE WILL make whole employees in the units described above for any losses they may have suffered because of any unilateral changes in wages, hours, and other working conditions or because of our failure to abide by the collective-bargaining agreements described above, with interest.

WE WILL, on request of Local 600M, rescind all unilateral changes; however, we will adhere to any changes in wages, benefits, or other terms and conditions of employment for unit employees which were

unilaterally instituted but are superior to those set forth in the agreements described above, except on the Union's request.

SULLIVAN BROTHERS PRINTERS, INC.

Kevin J. Murray, Esq., for the General Counsel.

Robert P. Corcoran, Esq., of Boston, Massachusetts, for the Respondent.

Anton G. Hajjar, Esq., of Washington, D.C., for the Charging Party and Intervenor.

DECISION

STATEMENT OF THE CASE

HAROLD BERNARD JR., Administrative Law Judge. I heard this case in Boston, Massachusetts, February 3 and 4, 1994, on a charge filed August 23, 1993, and complaint dated October 28, 1993, with later amendments alleging Respondent refused to recognize and bargain with Charging Party (Local 600M) and unilaterally changed employment terms and conditions of employment for employees in established contract covered bargaining units represented by Local 600M thereby violating Section 8(a)(5) and (1) of the Act. Respondent mainly admits it took the unilateral actions alleged in the complaint and amendments thereto but contends it had no duty to recognize or bargain with Local 600M and is therefore blameless. It bases its defense on the grounds that employees did not have a fair opportunity to decide whether to be represented by Local 600M in the course of a merger or administrative transfer by their established bargaining representatives (Local 109C and Local 139B)¹ into Local 600M and because the action produced dramatic changes in Locals 109C and 139B so that there is no continuity in employees' representation thereby nullifying any bargaining duties it had under the Act.

Based on the parties' briefs, the witnesses' demeanor on the stand, and the entire record, I make the following

FINDINGS OF FACT

I. JURISDICTION

Respondent is engaged in the commercial printing business at its facility in Lowell, Massachusetts, and annually purchases supplies valued in excess of \$50,000 directly from sources outside Massachusetts. Respondent also annually performs services valued in excess of \$50,000 for customers outside Massachusetts. As admitted, I find Respondent is an employer engaged in commerce under the Act. I further find that at all relevant times, Locals 109C, 139B, and 600—Respondent admitting only with respect to the status of 600M while contending in its answer that the former Locals lost their status after the merger—constituted labor organizations within the meaning of the Act.

¹ Local 109C, Graphic Communications International Union, AFL-CIO; and Local 139B, Graphic Communications International Union, AFL-CIO.

Appropriate Bargaining Units

The parties agree that the following employees of Respondent (the pressmen's unit) constitute an appropriate unit for collective bargaining:

All color cameramen and darkroom, black and white cameramen and darkroom, dot etchers, platemakers—black and white, photocomposer operators, platemakers—color, strippers, copy preparation, pasteup, layout and imposition, opaques and artist, pre-preparation, and plate processors, of Respondent but excluding all other employees, office clerical employees, guards and supervisors as defined in the Act.

They further agree that the following employees (the bookbinders' unit)

All journeyman I, journeyman I apprentices, and journeyman II employees and helpers, but excluding all other employees, office clerical employees, guards and supervisors as defined in the Act,

constitute an appropriate unit for collective bargaining. These units' existence date back many years, the latest contract covering the pressmen Local 109C unit running from June 1, 1992, to May 31, 1995; the bookbinders' Local 139B agreement from September 1, 1990, to August 31, 1993. (G.C. Exhs. 3 and 12.) Based on the record and the parties' agreement, I find the long-established bargaining units to be appropriate ones under the Act.

II. UNFAIR LABOR PRACTICES

A. Background

The facts are not in dispute. Local 109C represented employees in the pressmen's unit employed at Respondent's plant since 1960 or so, as well as separate pressmen's units at North American Directory Company (NADCO), the Lowell Sun, Brady Business Forms, and Bellerica Publishing, all located in the greater Lowell, Massachusetts area, since at least the 1950s. Local 139B represented units of bookbinders at Respondent's plant for at least 33 years and a separate bookbinder unit of employees at NADCO, also for a long period of time. This long history is marked by many collective-bargaining agreements between these unions and the employers, as well as marked structural changes in the form of mergers and affiliations by the labor organizations, such as the mergers leading Local 109C from under the original aegis of the International Printing Pressmen's and Assistants Union to its affiliation with Graphic Communications International Union, AFL-CIO (GCIU), and mergers by Local 139B leading from its earlier affiliations with the International Brotherhood of Bookbinders, then merging with the Photoengravers and Lithographers Union in 1975 followed by yet another merger of International unions leading to the affiliation with the GCIU as a sister local to Local 109C. Respondent continued recognition of the two locals throughout the course in their earlier structural changes. Local 600M for its part is a third sister local to Locals 109C and 139B under GCIU formed from and representing a combined mix of printing industry job classifications, including printing pressmen and bookbinders with a somewhat larger geographical jurisdiction encompassing Nashua, New Hampshire, and Bos-

ton, Massachusetts, including a plant located about 5 miles from Lowell, Massachusetts.

The three locals maintained separate constitutions and by-laws but functioned also under the shared governance of the constitution and bylaws of the GCIU. (G.C. Exh. 20.)

Membership levels in Locals 109C and 139B likewise reflect ever continuing fluctuations; Local 109C membership numbering 350 in 1984 dropping to 240 in October 1991 and then to about 40. For its part Local 139B membership reached 400 in 1975, decreased to 145 in 1990, 20 in 1991, and then dropped down to 10 members in 1993. Local 600M membership increased from its formation some 15 to 20 years ago and mergers to a current level of 700 active members employed at 40 locations in its described area.

Historically the NADCO employee members, some 210 outnumbered those employed by Respondent (18), Lowell Sun (12), Brady (3), and Billerica (1)—(there also being, in addition, 6 members at large) represented by Local 109C, as well as those represented by Local 139B and employed by Respondent (10 or 11) and NADCO (125–135). Given the pooling of votes system of determining winning candidates in the election of union officers it is not surprising that all but one of the elected officers for each local emerged from the NADCO ranks of employees.

The demise in NADCO's business in 1991, when it shut down its bindery operation, later closing the pressroom on March 12, 1993, and dismissing employees, had little or no immediate effect on the nature or viability of the locals' contracts' administration as Locals 109C and 139B continued to represent employees at the shops remaining. Employees at Respondent's plant continued to constitute a separate appropriate bargaining unit as did employees at the other employers' locations. Local 109C president and long-experienced Union Officer Henry Boormeester had negotiated two prior agreements covering Respondent's 109C-represented employees with assistance from Steve Wysocki a union chapel chairman and employee of Respondent, and the then current contract administration continued unabated. Oscar Becht, also a veteran officer in Local 139B, having held the position of shop steward, secretary-treasurer, vice president, and more recently president of the Local from 1986 to 1990 and then to June 1991 negotiated two contracts covering Respondent's book binder employees with an employee's assistance. There was historically no Local 139B shop steward exclusively for Respondent's bindery employees; employees discussed workplace matters with Becht directly. The NADCO closure also had little impact on Respondent's employees as they rarely if ever attended the NADCO employee-dominated meetings of either Local unless matters specific to their concerns at the Sullivan workplace drew them there. The lessened number of bargaining units, as well as the fewer members there to be serviced by remaining local union representatives, together with the fact that the existing contracts represented long-settled employment terms and conditions of the plant for employees in these shops, is consistent with the uncontradicted view that during the long period of time in the aftermath of the NADCO closure and the merger between the locals hereafter described (1991 to 1993), the two local union presidents and three chapel chairmen, with customary assistance from bargaining unit members kept representation matters running normally.

B. Merger

However, Local 109C President Henry Boormeester alerted to the prospect by an earlier NADCO announcement of the impending closing, published October 1990, and "not about to walk away from [the future remaining members of 109C]" searched for alternatives in the event, as was the case early on he could not find candidates for the open positions to be left vacant by the future plant closing—connected termination of Local 109C officers numbered among the terminated employees, while at the same time with other leaders described above continued employees' representation.

Chapter 15, paragraph 1, in the GCIU constitution strongly urges a merger in all situations where one or more local unions of the International exists in the same geographical area. (G.C. Exh. 4, p. 135.) He explored this possibility with the GCIU secretary-treasurer, Guy Devito, in order as he testified to look out for the best interest of the employees, as his term as president was to expire January 1994 and, in addition, it would be necessary for him to seek pressman employment elsewhere at some point. He also explored merger with another union Local 67 a newspaper employee union, and considered talk of Locals 109C and 139B merging. He then discussed merger with Local 600M President George Carlsen in October 1992, telling Carlsen that if it turned out that his efforts to find someone else to run the local did not succeed there might have to be a merger. Carlsen said if that condition turned out to be the case they could talk further.

Local 139B President Oscar Becht continued in office after the June 1991 layoff of other bindery employees when NADCO closed its bindery because NADCO kept 10 bindery employees, including Becht, on duty to assist the pressmen there until February 26, 1993, when the plant would close down altogether. At that point President Becht, with recording secretary, and secretary-treasurer, Jeanette Pickles, together with willing employees from among the remaining eight members under their continuing leadership at Respondent's plant handled grievances and administered the terms in the contract with Respondent dated September 1, 1990, and due to expire August 31, 1993. Since the unit there had functioned much as a separate satellite-like group to the NADCO prior unit mainly without any recent 139B officers from among Respondent's employees here also the actual nature of representation continued, for the time being at least, in an uneventful manner.

Becht also met with Carlsen, Boormeester, Pickles, and Local 139B members on and before March 1993 seeking Respondent employees to run the local in the future, presenting the alternative of a merger with Local 600M. He discussed the progress in such talks directly with five or six bindery employees on the day shift and had the information relayed to some three or four night-shift employees at the plant as there was no place to hold a formal meeting. Becht credibly testified that he informed employees in order for them to continue union affiliation the local needed to merge with a larger local, that Local 600M would take care of them the best, and that he did not get any negative feedback.

Local 109C conducted membership meetings concerning, inter alia, a proposed merger with Local 600M where discussion ensued on the subject on November 1, 1992, including consideration of merger with sister Local 139B or Local 67, and on December 6, 1992, wherein Carlsen as an invited guest described Local 600M and took a number of questions

from the floor regarding the proposed merger to which he responded. After Carlsen left the meeting, members discussed the topic further and Boormeester testified that the employees seemed satisfied. (Minutes of union meeting G.C. Exh. 6.) He decided to schedule a vote on the proposed merger to be held at the January 10, 1993 local union meeting and instructed union stewards to post notices, testifying he told them the notice should contain the fact that the merger vote would be taken then and that such notices appeared in all the shops.

Becht testified that he informed Respondent's employees via a former NADCO employee he knew over the years then working for Respondent, Manny Mendez, a week beforehand that he would be bringing ballots around for employees to use for a vote on the merger question—a vote he recalled being conducted on March 29, 1993.

C. Voting Procedures

Local 109C voting on the merger at a doughnut shop used as a union hall occurred as scheduled beforehand and as notified members. Boormeester presided. Employees some 35 to 40 from all the Local 109C-represented shops attended, including 10 or 11 from Respondent's plant. He explained that a yes vote on the ballot was to merge and a no vote not to merge. The record supports the conclusion that a motion from the floor to postpone the vote was denied for reasonable cause, namely, that hoped-for contacts in the past with other conceivable merger candidates had led nowhere but to the conclusion that such candidate unions were not interested, and because the meeting had been noticed enough in advance to have afforded other leads to have surfaced by then and because it was Boormeester's sense that many employees had showed up specifically because of the vote, lending value to the idea of taking it then with a good turnout of members at hand. He asked those employees present who had no future interest in the local, those about to retire and for further example NADCO employees leaving employment in the industry and those on the brink of becoming honorary life long members due to being over 50 kindly to abstain from voting though he assured them they had the right to vote. He prevented no one from voting and the record is free of any suggestion to the contrary. He gave each member who wanted to vote a ballot. The voter could cover the ballot with his or her hand or walk to the rear of the room, mark his or her ballot, and deposit it in a locked ballot box. Four members randomly selected from the floor by him counted the ballots after unlocking the box. Their tally of votes showed 19 in favor of the merger and 6 against.

Local 139B voting took place as scheduled at Respondent's plant on March 29, 1993. Becht—139B president—earlier, the week before informed employees he would be there on this date, that he would bring ballots to be used for a vote on whether to merge with Local 600M. He spoke with a day-shift employee directly and told employee Manny Mendez everyone was to receive one ballot, that they were to vote then put the ballot in an envelope, sealed and returned to him. No employee voiced any objection to the proposed procedure. On voting day, Becht testified he handed out ballots to five or six employees, everyone on the day-shift present. The ballots are inscribed with the words: "OFFICIAL BALLOT PROPOSED MERGER WITH LOCAL 600M BOS-

TON, MA. YES [] NO []." (G.C. Exh. 15.) He left ballots for the night-shift employees to use with Mendez for distribution to them. Becht told employees the ballots were to be placed back into the envelope and that Mendez was to then seal the envelope and deliver it to him the following day. On opening the sealed envelope the next day, he counted eight ballots, all being votes cast in favor of the merger. Becht was not present when the ballots were reportedly passed out the evening before the ballot count, which took place at noon—the day after he had passed out ballots to the day shift. Becht testified to the "belief" that someone referred to only as "he" just handed the ballots out without checking names off at night and that the "individual" who passed them out at night was responsible to collect them. Without any foundation being first (or later) provided for such statement, Becht also testified that the employees who voted all were union members at the time of the vote. How he knew this is unexplained. Also left devoid of any informative answers are significant questions of who had custody of the envelope from the time it was delivered to employees and then returned to Becht at noon the following day, if anyone; where was it kept, and whether any safeguards whatsoever reasonably protected the secrecy and reliability of the ballots during the course in the day and a half consumed before Becht arrived and the ballots were tallied. It is strongly compelling to believe that employee Mendez, longtime known to Becht from their NADCO acquaintanceship and Becht's contact man later at Respondent's plant where Mendez was employed, including specifically Becht's only identified assistant in the voting is in a position to shed light on these crucial questions, yet he was not called to testify. The fact that Becht identified Mendez earlier in the chronology in events as playing a central role in conducting the vote, yet did not even know whether two described supervisors had voted based on his own inquiry or expectable word from Mendez is contrary to the notion that he knew anything at all about events in significant respects concerning the evening balloting procedures in the election. Nor did he or anyone testify to the actual voting by day-shift employees, Becht saying only he did not get the ballots right back. This was an obvious hole in the case, not merely a question whether there was actual evidence of tainted ballots yet no employee member in Local 139B whatsoever was called to the stand to describe any events first hand. See *News/Sun-Sentinel Co.*, 290 NLRB 1171, 1176 (1988). The burden of establishing irregularities in the conduct of the election rests on Respondent, to be sure. *Quality Inn Waikiki*, 297 NLRB, 497, 501 fn. 13 (1989). But where the General Counsel's own evidence at the outset on its face depicts an absence of minimal standards of due process such cannot be ignored. Thus, to begin with there is no evidence the ballots given day-shift employees were ever cast by them, and if so turned in, and if so, to whom, and if so, put in the envelope and if so, remained there until the count. There is even no evidence of ballots actually being given to any night-shift employees or to whom ballots were given, if anyone that night, where they were kept all that evening, that night, and throughout all the morning hours. Accordingly, the ballots counted by Becht and others the next day drawn from some unidentified envelope are not shown reasonably by any probative evidence to be authentic votes cast by the employees in this already poorly devised and overly lax procedure

which so clearly lacked even minimal standards of due process. *Santa Barbara Humane Society*, 302 NLRB 833, 837 (1991). It is very aptly noted in a Board-adopted Regional Director's decision that

The U.S. Supreme Court stated in *NLRB v. Financial Inst. Employees (Seattle-First National)*, 475 U.S. 192 (1986):

The Act recognizes that employee support for a certified bargaining representative may be eroded by changed circumstances. In such cases, employees may petition the Board for another election alleging that the certified representative no longer enjoys majority support. Also, the Employer can based on objective considerations petition the Board for an election if it can show reasonable grounds for believing the union has lost its majority.

The court went on to state that it has been the Board's practice to reject an election when two tests are met. First the union members have had an opportunity with adequate notice, to vote on the merger. Second, there has been a substantial "continuity between the pre and post affiliation union." In *Seattle-First National Bank*, supra, the Court affirmed the Circuit Court of Appeals decision which reversed the Board's decision. The Board had dismissed the Union's 8(a)(5) refusal to bargain charge. The Board's dismissal of the charge was based on the fact that non-union members were not given the right to vote on the affiliation. The Supreme Court stated the voting on affiliation is an internal union matter not subject to the Board's scrutiny. Rather, the Board must decide only whether the new union was in fact a substantial continuation of the bargaining representative. The Board is restricted by the Act to either amend the certification or find an 8(a)(5) violation. The Board exceeds its authority when it dismisses an 8(a)(5) complaint based solely on the procedure followed in disallowing non-union members the right to vote on the affiliation. The Court stated the Act provides, the only method for decertifying the union and that is by allowing the employees the right to vote on the matter. The Board cannot by itself defeat this procedure. The court appears to hold that if the Board in dismissing Section 8(a)(5) did so based on the lack of continuing representative status of the merged union then the dismissal would be appropriate. [*City Wide Insulation*, 307 NLRB 1, 3 (1992).]

Counsel for the Charging Party noted on brief that further in this vein the Court's opinion noted "that it may even be inappropriate for the Board to impose due-process safeguards with respect to union members," 475 U.S. at 199 fn. 6, in the opinion. I can find, however, no Board decisions revisiting and setting aside the requirement that at least minimal due process be accorded employees in merger votes, and the Board in at least one case issuing 6 days after *City Wide Insulation*, supra, seemed clearly to be presented with the opportunity to do so and did not do so and in fact indicated indirectly that the due process test is still in effect. *Service America Corp.*, 307 NLRB 57, 61 fn. 6 (1992). Therefore, though the principle be under the most respectable and desir-

able scrutiny inviting a further look I am bound by its current authority as Board law. There were no such defects in the Local 109C election procedure which was unchallenged by the employees and which, I find, accorded employees ample notice and an opportunity to cast their votes in secret under conditions providing an ample and fair opportunity for discussion, to consider the matter and vote, so that the results in favor of the merger with Local 600M by employees from Local 109B represents their authentic support following an appropriate procedure. *Quality Inn Waikiki*, supra at 501, and *Toyota of Berkeley*, 306 NLRB 893, 899, 901 (1992), where the administrative law judge noted that the integrity and secrecy of the ballots were maintained.

D. Continuity in Representation

Respondent's remaining defense for its admitted refusal to recognize and bargain with Local 600M and repudiate the 1992-1995 collective-bargaining agreement to which Local 109C and Respondent are parties is because the merger resulted in dramatic changes thereby raising a question concerning representation. In *Toyota*, supra at 900, it is noted:

In determining whether a "question concerning representation" exists because of a lack of continuity, the Board is not directly inquiring into whether there is majority support for the labor organization after the changes at issue, but rather is seeking to determine whether the changes are so great that a new organization has come into being—one that should be required to establish its status as a bargaining representative through the same means that any labor organization is required to use in the first instance. In *Western Commercial Transport*, 288 NLRB 214 (1988), the Board stated: The focus of inquiry is on whether the changes are "sufficiently dramatic to alter the union's identity," so as to raise a question concerning representation. *May Department Stores Co.*, 289 NLRB 661, supra, citing *Seattle-First*, 475 U.S. 192, 206 (1986). See also *News/Sun-Sentinel Co.*, supra at fn. 1, and *May Department Stores Co. v. NLRB*, supra. Consequently, the Board considers a range of factors including the continued leadership responsibilities of the existing union officials, the perpetuation of membership rights and duties, the continuance of the manner in which contract negotiation, administration, and grievance processing are effectuated, and the preservation of the certified representative's assets, books, and physical facilities. E.g., *Western Commercial Transport*, supra. In applying this fact, however, specific approach "no strict check list is used," rather "[t]he Board considers the totality of a situation." *May Department Stores Co. v. NLRB*, supra, quoting with approval *Yates Industries*, 264 NLRB 1237, 1250 (1982). And, the burden of proving a change in a union's identity rests with the respondent-employer. *H. B. Design & Mfg.*, 299 NLRB 73 (1990); *Insulfab Plastics*, 274 NLRB 817, 821 (1985), enfd. 789 F.2d 961 (1st Cir. 1986).

It is noted in *City Wide Insulation*, supra at 3:

However, the Board in *National Posters*, 289 NLRB 468, 479 (1988), adopted an ALJ decision ordering the

Employer to bargain with the new entity. The judge in finding a continuity of representative stated:

[T]he proper question in a case like this one is not whether there is a "lack" of local authority, but whether the preexisting local authority, with which the unit employees had presumptively been satisfied, has substantially *changed* for the worse. . . .

E. Continued Leadership Responsibilities

NADCO employees, some 210 employees who vastly outnumbered the other bargaining units at Respondent, and the other 3 employer units represented by Local 109C constituted all the officers and directors of the Local, 11 officers and directors. When NADCO completed its closing in February 1993 Boormeester continued actively to service employees in the remaining bargaining units comprised of about 40 employees with the help of 3 shop steward-like chapel chairmen and in further concert with numerous local union members at their locations—including Respondent's employee and Chapel Chairman Stephen Wysocki. The chapel chairmen play a vital role under Local 109C policy serving as point guards to resolve grievances early on and over the history of 109C helping to negotiate collective-bargaining agreements. The long-term 33-year history of stable labor relations between Local 109C and the employers here reflects settled patterns in terms and conditions of the members' employment environment and is highly consistent with the fact that there is no record evidence contradicting that for the period in question before the merger and after NADCO closed, even with the diminution among *de jure* officers, normal daily contract administration including grievance handling continued unchanged; the Respondent's contract with Local 109C remained fully in place then and the Local remained viable. Local 109C members, presumptively satisfied with their representation in premerger periods, rarely attended the Local 109C union meetings held in a rented doughnut shop room and attended mostly by NADCO employees, unless a specific Respondent-related issue arose. It was Boormeester, sometimes with another officer and Wysocki who drew from members of Respondent's employees the bargaining objectives, just as was true of all the other separate bargaining units under the umbrella of Local 109C. The Local's GCIU International representative is also an incontestable and important part of the leadership for Local 109C members during the premerger period especially given the fact that, as the parties stipulated, all the sister locals operated to provide representation duties under commonly shared governance, and the source for this business-agent-like leadership remained the same, as well as the basis for assignment being the geographical area involved so that representation by the International representatives remained the same.

Boormeester after the merger became an elected executive board member on August 5, 1993, and represented the former Local 109C members employed by Respondent in the dispute over Respondent's unilateral changes in a 401(k) plan in a letter sent in his official Local 600M capacity on September 28, 1993, as well as demanding bargaining over new equipment purchased by Respondent. (G.C. Exh. 11.) His long-time practice of regular contact with chapel chairmen continued, with regular contacts between Wysocki and him over representation of Respondent's employees and

Local 600M President Carlsen testified credibly that the Local denoted him for membership on the negotiating committee from Local 600M when it negotiates with Respondent. He represented Local 600M in other negotiations with employers whose employees Local 109C previously represented, Lowell Sun and Brady Business Forms, and concededly will do so at another premerger Local 109C-represented unit at Billerica Publishing.

Wysocki retains the same leadership role at Respondent after the merger that he held before and will be used according to Carlsen's credited testimony as a negotiating committee member as before in contract negotiations with Respondent. The two shop delegates (chapel chairmen) at Lowell Sun also continue in these positions under Local 600M. There were no such positions at Brady and Billerica due to the small unit size. Carlsen credibly testified he offered leadership positions to Local 109C members so interested and never refused to grant former Local 109C leaders or members such appointments or chances for election to Local 600M positions. He confirmed that, in the same manner Local 109C always sought contract proposals from unit employees before contract negotiations, he had also done so beforehand in the negotiations with Lowell Sun since the merger and would continue to do so in contract negotiations.

Counsel for Respondent urges that the loss of Local 109C officers on merger with Local 600M caused dramatic change in the labor organization. The Board has, however, as already (noted above), eschewed a reliance on any single factor for such finding and rather evaluates the entire circumstances. In particular the Board has indicated while "continued leadership by the officials of a merged union is one element the Board has examined, we know of no requirement that officers of a merged local must become officers of the new local in order to find continuity" going on to say leadership has a broader definition encompassing other representatives who fill positions of responsibility and trust. *Service America Corp.*, supra at 60. The record establishes a substantial continuation in the leadership of Local 109C in terms of the delivery of representation services to Local 109C members following the NADCO closing—caused diminution in the number of officer—which diminution was not caused by the merger but was simply another earlier dynamic change in the continuing ever changing evolution of the Local and its Internationals as described above. Considering this naturally caused reduction in number of officers there is a reasonable basis to believe that in the nature of things the merger which left Boormeester, three chapel chairmen, and interested involved employee members in continued substantial local authority to run their representation affairs caused little actual day-to-day changes. Viewing other factors discussed below in tandem the Local 109C preexisting authority has certainly not been shown to have substantially changed for the worse after the merger. *City Wide Insulation*, supra.

F. Membership Rights and Duties

The members of Locals 109C and 600M are covered by the same International constitution and bylaws, a common circumstance, and a separate constitution or bylaws covered each Local's members prior to the merger. (G.C. Exh. 5; G.C. Exh. 20.) There is a 4-year employment rule for running for office in Local 109C, 5 years for Local 600M members—all Local 109C members qualify under the latter. Con-

tract ratification procedures are the same as are strike votes and strike fund contributions and disbursements. Meeting intervals are the same as before, as are grievance-handling procedures. The access to International representatives remains the same as before—based on geographical area the same representatives are assigned. Local 600M imposes dues on a sliding scale based on income but is not currently requiring any dues payments from the former Local 109C members given Respondent's failure to recognize Local 600M, and the per capita tax is the same. Local 600M accepted all the Local 109C members into membership without initiation fees. Dues will eventually rise to \$9.22 versus \$8 formerly charged Local 109C members. There are no differences of any consequence in these matters.

Local 109C assets only consisted of \$12,000 which transferred into the Local 600M strike or emergency fund. Dues are now paid into the general Local 600M funds. Local 109C records transferred to Local 600M. Local 600M assumed the liabilities of Local 109C including pension obligations to certain retirees and accepted the former Local 109C members into its memberships on approval of the merger by it and the International. Local 600M also accepted the ongoing Local 109C collective-bargaining agreement not due to expire until May 31, 1995, thereby continuing the Local 109C negotiated terms as far as Local 600M President Carlsen and his Local are concerned. The two sister locals in GCIU have always shared important representation governance under the GCIU constitution commonly associated with local unions affiliated with the same International union, a close enough association so that it can be said:

Mergers of this kind, in contrast to mergers of small local independent unions with international organizations, have less inherent potential for significant change. Note *Union Affiliation & Collective Bargaining*, 128 U.Pa.L.Rev. 430, 457 (1979). [*Toyota of Berkeley*, supra at 903.]

I have also considered the view that the greater number of members in Local 600M (700 to 40 in Local 109C) evidences a dramatic change in the Local 109C members' representation but find no merit there. All the locals here experienced dramatic growth changes throughout the course in their long histories and the numbers rose and dropped as a common matter; it is uncontradicted that the Respondent's employees and the other units of Local 109C continued in major respects as autonomous bargaining units postmerger with the right and power to devise their own contract demands, negotiate their own contracts through local union officers and unit employees in their separate units, conduct their own strike votes—as before with International sanction, and process and resolve grievances through their own shop representatives, all within a mostly identical union organizational structure, within nearly the same geographical and trade union jurisdiction encompassing theirs. The mere change in numbers of union members had no real effect or change at all. If anything the merger—an event altogether in keeping with a classical role accorded sister locals to help continue collective-bargaining representation for fellow union members in the same geographical and trade jurisdiction—is a strengthening effect on the Local 109C members local authority which continued in real respects described above in-

tact even more fully supported by augmented Local 600M resources. As I find the merger of the two GCIU Locals to constitute continuity of representation, no question concerning representation exists. Respondent admits to the specific complaint allegations of unlawful refusal to recognize and bargain with Local 600M which the record reflects occurred on or about August 11, 1993, and to the unilateral changes described below.

CONCLUSIONS OF LAW

1. The Respondent, Sullivan Brothers Printers, Inc., is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. The Charging Party, Local 600M, Graphic Communications International Union, AFL-CIO and Locals 109C and 139B, GCIU, respectively, at relevant times constituted labor organizations within the meaning of Section 9(b) of the Act.

3. At all times material, Local 600M, Graphic Communications International Union, AFL-CIO has been the exclusive representative for purposes of collective bargaining in the following described appropriate unit for collective bargaining within the meaning of Section 9(b) of the Act:

All color cameramen and darkroom, black and white cameramen and darkroom, dot etchers, platemakers-black and white, photocomposer operators, platemakers-color, strippers, copy preparation, pasteup, layout and imposition, opaques and artist, pre-preparation, and plate processors, of Respondent but excluding all other employees, office clerical employees, guards and supervisors as defined in the Act.

4. By its withdrawal of recognition from Local 600M, Graphic Communications International Union, AFL-CIO and its refusal to bargain with the Union, Respondent violated Section 8(a)(5) and (1) of the Act.

5. By its repudiation of the collective-bargaining agreement in effect from June 1, 1992, through May 31, 1995, covering the above-described pressmen's unit, and by ceasing contribution to the pension plans, announcing a 401(k) plan, ceasing dues deductions and their remittance to Local 600M, refusing to bargain over new equipment, granting Christmas bonuses, and implementing a proofreading bonus, all regarding the pressmen unit employees, without according notice to and an opportunity to bargain thereon to Local 600M, Respondent has violated Section 8(a)(5) of the Act.

6. The aforesaid unfair labor practices have a close, intimate, and substantial effect on the free flow of commerce within the meaning of Section 2(2), (6), and (7) of the Act.

7. Respondent did not violate Section 8(a)(5) of the Act with respect to the bookbinders unit of employees of Respondent formerly represented by Local 139B.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. With respect to any dues and fees collected by the Respondent pursuant to checkoff, but withheld from Local 600M, I shall order that all such funds be remitted to Local 600M, with interest to be computed in the manner prescribed in *New Horizons for the Retarded*. In accord-

ance with the Board's decision in *New Horizons for the Retarded*, 283 NLRB 1173 (1987), interest on and after January 1, 1987, shall be computed at the "short-term Federal rate for the underpayment of taxes as set out in the 1986 amendment to 26 U.S.C. § 6621. Interest on amounts accrued prior

to January 1, 1987 (the effective date of the 1986 amendment to 26 U.S.C. § 6621), shall be computed in accordance with *Florida Steel Corp.*, 231 NLRB 651 (1977).

[Recommended Order omitted from publication.]